Supreme Court, U.S.
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No. 85-91

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

MARIA DE LA LASTRA PETRIRE,

Petitioner,

—against—

SPANTAX, S.A.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT SPANTAX, S.A.

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Question Presented

Did the Court below correctly determine that Spain was "the place of destination" of the contract of transportation made by petitioner's decedent so that the Courts of the United States lacked subject matter jurisdiction to hear the case under Article 28(1) of the Warsaw Convention?

TABLE OF CONTENTS

PAGE

Question Presented i

Table of Contents ii

Table of Authorities iii

Statement of the Case 1

Reasons for Denying the Writ 3

I. No Significant Issue Is Presented for Review by the Certiorari Petition 3

II. The Decision of the Court Below Is Consistent With Substantial Authority in Other Circuit and District Courts 4

Conclusion 6

Table of Authorities

Cases: PAGE

Aanestad v. *Air Canada, Inc.*, 390 F. Supp. 1165 (C.D. Cal. 1975) 5

Bornstein v. *Scandinavian Airlines System*, 16 Av. Cas. (CCH) 17,741 (S.D.N.Y. 1981) 5

Butz v. *British Airways*, 421 F. Supp. 127 (E.D. Pa. 1976), *aff'd*, 566 F.2d 1168 (3d Cir. 1977) 4

Camacho v. *Aerovias Nacionales de Colombia, S.A.*, 18 Av. Cas. (CCH) 17,870 (S.D.N.Y. 1984) 5

Fulton v. *Lufthansa German Airlines*, 14 Av. Cas. (CCH) 18,284 (N.D. Ill. 1977) 5

Gayda v. *LOT Polish Airlines*, 702 F.2d 424 (2d Cir. 1983) 4

Hurley v. *KLM Royal Dutch Airlines*, 562 F. Supp. 260 (C.D. Cal. 1983), *vacated*, 602 F. Supp. 1249 (C.D. Cal. 1985) 5

In Re Korean Air Lines Disaster of September 1, 1983, Misc. No. 83-0345, MDL No. 565 (D.D.C. July 25, 1985) 5

Karfunkel v. *Compagnie Nationale Air France*, 427 F. Supp. 971 (S.D.N.Y. 1977) 5

McCarthy v. *East African Airways Corp.*, 13 Av. Cas. (CCH) 17,385 (S.D.N.Y. 1974), *aff'd sub nom. Fay* v. *East African Airways Corp.*, 517 F.2d 1395 (2d Cir. 1975) 4

Smith v. *Canadian Pacific Airways, Ltd.*, 452 F.2d 798 (2d Cir. 1971) 4

Treaty: PAGE

Convention for the Unification of Certain Rules Relating to International Transportation by Air, October 12, 1929, 49 Stat. 3000, T.S. No. 876, 137 L.N.T.S. 11, reprinted in 49 U.S.C.A. §1502 note (1976) .....*passim*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Statement of the Case

This is an action to recover damages for the alleged wrongful death of Carlos Conrado Lazcano, petitioner's decedent, who was killed in the crash of a Spantax[1] aircraft at Malaga, Spain on September 13, 1982. Decedent, a Spanish citizen and resident, was a passenger on the aircraft pursuant to a passenger ticket comprised of two consecutively numbered ticket booklets for his round trip flight from Madrid to New York to Madrid. The two booklets were issued simultaneously in Madrid, Spain and provided for transportation from (1) Madrid to Malaga, (2)

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[1] Spantax, S.A. is a privately held Spanish corporation. It has no parent companies and holds some shares in Club de Vacaciones, a tour operator.

Malaga to New York, and (3) New York to Madrid. The Madrid to Malaga and Malaga to New York coupons were in the first numbered ticket booklet and the New York to Madrid coupon was in the second numbered ticket booklet. At the time of his death, petitioner's decedent was travelling on the Malaga to New York coupon in the first numbered ticket booklet.

Petitioner did not dispute that her decedent's travel was "international transportation" [2] within the meaning of the Warsaw Convention or that the only way of establishing subject matter jurisdiction in the United States was to demonstrate that New York was "the place of destination" in the contract of transportation of her decedent. She claimed, however, that the two ticket booklets should be interpreted to be two separate contracts of transportation and that jurisdiction was proper in the United States since New York was "the place of destination" within the meaning of Article 28(1)[3] of the Warsaw Convention because it was the destination in the coupon on which her decedent was travelling at the time of the accident.

Both the District Court and the Court of Appeals, following earlier precedents, held that there was but one contract of transportation and that "the place of destination" of the transportation, within the meaning of Article 28(1), was Madrid, Spain, the ultimate destination shown on the

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[2] Officially, the Convention for the Unification of Certain Rules Relating to International Transportation by Air, October 12, 1929, 49 Stat. 3000 (1934), T.S. No. 876, 137 L.N.T.S. 11, reprinted in 49 U.S.C.A. §1502 note (1976). Hereinafter the treaty will be referred to as the Warsaw Convention or simply the Convention.

[3] Article 28(1) of the Warsaw Convention provides as follows:

> An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court of the domicile of the carrier or of his principal place of business, or where he has a place of business through which the contract has been made, or before the court at the place of destination.

49 Stat. 3020.

flight coupons which made up the contract of transportation. In dismissing the Complaint, both the District Court and the Court of Appeals concluded that the courts of the United States lacked subject matter jurisdiction over the case in the "treaty sense" since the United States was not one of the four places where an action for damages must be brought under Article 28(1) of the Warsaw Convention. The District Court's dismissal of the Complaint for lack of treaty jurisdiction, 577 F. Supp. 1013 (E.D.N.Y. 1984) (App. 8a-11a), was affirmed by the Court of Appeals. 756 F.2d 263 (2d Cir. 1985) (App. 1a-7a). A petition for rehearing was denied by the Court of Appeals on April 8, 1985 (App. 12a-13a). This petition followed.

REASONS FOR DENYING THE WRIT

I.

No Significant Issue Is Presented for Review by the Certiorari Petition.

The narrow issue presented for review is whether the petitioner's decedent had one or two contracts of transportation with Spantax. If there was only one contract of transportation, then Madrid was indisputably "the place of destination" within the meaning of Article 28(1) of the Warsaw Convention. If each ticket booklet was a separate contract of transportation, then New York was "the place of destination". Analyzing the undisputed facts, the Court of Appeals concluded that there was but one contract of transportation.

> The already fine distinctions that have developed in construing the Warsaw Convention would become absurd if the existence of a single contract turned on whether the three coupons issued for travel in this case were enclosed in one or two booklets, or whether a second booklet was used because the ticketing agent did not have on hand a ticket booklet with more than

> two coupons, or whether the two booklets were stapled together. What should matter when determining whether two or more ticket booklets constitute a single contract for purposes of the Treaty are the time and place of issuance of the booklets and the contemplated degree of continuity of the journey being ticketed. We need not attempt to formulate a general test to fit all of the combinations of relevant facts that might arise. It suffices to agree with Judge Nickerson that a single contract existed on the undisputed facts of this case. Appellant makes no claim that Conrado intended to purchase only a ticket from Madrid to New York and was issued a return ticket by mistake.

756 F.2d at 265-66; App. 4a-5a. The conclusion of the Court below, based upon the undisputed facts as to the decedent's ticketing, was correct and does not warrant review by the Court.

II.

The Decision of the Court Below Is Consistent With Substantial Authority in Other Circuit and District Courts.

The conclusion reached by the Court of Appeals was in conformity with earlier precedents which have held that, for purposes of determining "the place of destination" within the meaning of Article 28(1) of the Warsaw Convention, the ultimate destination shown in the contract of transportation is controlling. *Gayda* v. *LOT Polish Airlines*, 702 F.2d 424 (2d Cir. 1983); *Smith* v. *Canadian Pacific Airways, Ltd.*, 452 F.2d 798 (2d Cir. 1971); *Butz* v. *British Airways*, 421 F. Supp. 127 (E.D. Pa. 1976), *aff'd*, 566 F.2d 1168 (3d Cir. 1977); *McCarthy* v. *East African Airways Corp.*, 13 Av. Cas. (CCH) 17,385 (S.D. N.Y. 1974), *aff'd sub nom. Fay* v. *East African Airways Corp.*, 517 F.2d 1395 (2d Cir. 1975). Numerous District

Court opinions have also adopted this interpretation of "the place of destination" within the meaning of Article 28(1). *See In Re Korean Air Lines Disaster of September 1, 1983*, Misc. No. 83-0345, MDL No. 565 (D.D.C. July 25, 1985); *Karfunkel* v. *Compagnie Nationale Air France*, 427 F. Supp. 971 (S.D.N.Y. 1977); *Camacho* v. *Aerovias Nacionales de Colombia, S.A.*, 18 Av. Cas. (CCH) 17,870 (S.D.N.Y. 1984); *Bornstein* v. *Scandinavian Airlines System*, 16 Av. Cas. (CCH) 17,741 (S.D.N.Y. 1981); *Fulton* v. *Lufthansa German Airlines*, 14 Av. Cas. (CCH) 18,284 (N.D.Ill. 1977).

The only cases disagreeing with this analysis of the meaning of the term "the place of destination" as it is used in Article 28(1) are District Court decisions from California which are legally incorrect and, if not, factually distinguishable. In *Aanestad* v. *Air Canada, Inc.*, 390 F. Supp. 1165 (C.D. Cal. 1975) where the date of the passenger's return flight was open, and in *Hurley* v. *KLM Royal Dutch Airlines*, 562 F. Supp. 260 (C.D. Cal. 1983), where the passenger was uncertain as to whether she would ever return to the place listed as the destination on the contract of transportation, the District Courts held that the destination of the flight on which the passenger was travelling at the time of the accident was "the place of destination" for Article 28 purposes. The *Hurley* decision was recently vacated for reasons unimportant here. *Hurley* v. *KLM Royal Dutch Airlines*, 602 F. Supp. 1249 (C.D. Cal. 1985).

In any event, the *Hurley* and *Aanestad* cases are factually distinguishable from the petitioner's case: all of the decedent's flight coupons here were filled in with the date and number of the flight, petitioner's decedent planned to remain in New York for only five days, and petitioner concedes that her decedent's stay in the United States was temporary (Petition, p. 4). Given these facts, the Court of Appeals properly approved the District Court's "sensible approach" in ruling that, at least in this case, where it

was undisputed that two sequentially numbered ticket booklets were issued at the same time and at the same place for a round trip to be interrupted by no more than a five day stopover, a single contract of transportation had been made.

This case does not present a substantial question of treaty interpretation requiring a decision by the Court. There is but one "place of destination" for Article 28(1) purposes regardless of the number of ticket booklets which make up the contract of transportation.

The Court below correctly held that there was a single contract of transportation with the place of destination in Madrid. Since the other places where an action for damages must be brought under Article 28(1) were concededly not in the United States, the Complaint was properly dismissed for lack of treaty jurisdiction.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

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Certificate of Service

I hereby certify that I have, this 31st day of July, 1985, served three copies of the foregoing Brief in Opposition by respondent Spantax, S.A. to the Petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit upon petitioner by depositing same in a United States mailbox at 1251 Avenue of the Americas, New York, New York 10020, with first class postage prepaid to:

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July 31, 1985

/s/ MICHAEL J. HOLLAND

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